



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
2 NAVY ANNEX
WASHINGTON DC 20370-5100

ELP
Docket No. 2656-00
26 September 2000

Dear [REDACTED]

This is in reference to your application for correction of your naval record pursuant to the provisions of Title 10, United States Code, Section 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 20 September 2000. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice.

The Board found that you enlisted in the Marine Corps on 11 June 1973 for four years. Prior to enlistment, your father certified that your date of birth was 2 June 1955. The recruiter also sighted your birth certificate. It was noted on your enlistment papers that your mother had disappeared on 8 January 1958, her whereabouts was unknown at that time, and your father had been your sole support.

The record reflects that you were advanced to PFC (E-2) and served for 11 months without incident. However, during the three month period from May to August 1974 you received two nonjudicial punishments (NJP) for failure to obey a lawful order and a six-day period of unauthorized absence (UA). On 29 August 1974, the same day as your second NJP, you were reported UA and remained absent until you surrendered on 23 September 1974.

On 17 October 1974 you submitted a request for an undesirable discharge for the good of the service to escape trial by court-martial for the foregoing 24-day period of UA, failure to obey a lawful order, disrespect, and breaking restriction. Prior to submitting this request you conferred with a qualified military lawyer at which time you were advised of your rights and warned of the probable adverse consequences of accepting such a discharge. A staff judge advocate reviewed the request and found it to be sufficient in law and fact. On 7 November 1974 the discharge authority directed an undesirable discharge for the good of the service. You were so discharged on 15 November 1974.

In its review of your application the Board carefully weighed all potentially mitigating factors such as youth and immaturity, limited education, and the fact that it has been nearly 26 years since you were discharged. The Board noted your contentions to the effect that you altered your birth certificate in order to enlist, you came from an abusive family, your stepfather beat your mother, when you returned to Parris Island you were put in the brig and had nervous breakdown, doctors wanted you to fight for a medical discharge, and that you never had an NJP or court-martial. Your contentions are neither supported by the evidence of record nor by any evidence submitted in support of your application. A copy of the birth certificate you claim was altered was not submitted with your application. However, the record indicates that your father certified that the date shown on your enlistment papers was correct. The Board concluded that the foregoing factors and contentions were insufficient to warrant recharacterization of your discharge given your record of two NJPs and the fact that you accepted discharge rather than facing trial by court-martial. The Board believed considerable clemency was extended to you when your request for discharge to avoid trial by court-martial was approved since, by this action, you escaped the possibility of confinement at hard labor and a punitive discharge. Further, the Board concluded that you received the benefit of your bargain with the Marine Corps when your request for discharge was granted and you should not be permitted to change it now. Given all the circumstance of your case the Board concluded your discharge was proper and no change is warranted. Accordingly, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records.

Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER
Executive Director

Disabled American Veterans